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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
12/07/2011	.	
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The Committee on Commerce and Tourism (Detert) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 288.075, Florida Statutes, is amended to  
read:

288.075 Confidentiality of records.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Economic development agency" means:

1. The Department of Economic Opportunity;

2. Any industrial development authority created in  
accordance with part III of chapter 159 or by special law;



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13           3. Space Florida created in part II of chapter 331;

14           4. The public economic development agency of a county or  
15 municipality or, if the county or municipality does not have a  
16 public economic development agency, the county or municipal  
17 officers or employees assigned the duty to promote the general  
18 business interests or industrial interests of that county or  
19 municipality or the responsibilities related thereto;

20           5. Any research and development authority created in  
21 accordance with part V of chapter 159; or

22           6. Any private agency, person, partnership, corporation, or  
23 business entity when authorized by the state, a municipality, or  
24 a county to promote the general business interests or industrial  
25 interests of the state or that municipality or county.

26           (b) "Proprietary confidential business information" means  
27 information that is owned or controlled by the corporation,  
28 partnership, or person requesting confidentiality under this  
29 section; that is intended to be and is treated by the  
30 corporation, partnership, or person as private in that the  
31 disclosure of the information would cause harm to the business  
32 operations of the corporation, partnership, or person; that has  
33 not been disclosed unless disclosed pursuant to a statutory  
34 provision, an order of a court or administrative body, or a  
35 private agreement providing that the information may be released  
36 to the public; and that is information concerning:

37           1. Business plans.

38           2. Internal auditing controls and reports of internal  
39 auditors.

40           3. Reports of external auditors for privately held  
41 companies.



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42 (c) "Trade secret" has the same meaning as in s. 688.002.

43 (2) PLANS, INTENTIONS, AND INTERESTS.—

44 (a) ~~If Upon written request from~~ a private corporation,  
45 partnership, or person requests in writing before an economic  
46 incentive agreement is signed that,~~information held by an~~  
47 economic development agency maintain the confidentiality of  
48 information concerning plans, intentions, or interests of a such  
49 private corporation, partnership, or person to locate, relocate,  
50 or expand any of its business activities in this state, the  
51 information is confidential and exempt from s. 119.07(1) and s.  
52 24(a), Art. I of the State Constitution. The information will  
53 remain confidential and exempt for 12 months after the date an  
54 economic development agency receives a request for  
55 confidentiality, for 90 days after the signing of an economic  
56 incentive agreement, or until the information is otherwise  
57 disclosed, whichever occurs first.

58 ~~(b) An economic development agency may extend the period of~~  
59 ~~confidentiality specified in paragraph (a) for up to an~~  
60 ~~additional 12 months upon written request from the private~~  
61 ~~corporation, partnership, or person who originally requested~~  
62 ~~confidentiality under this section and upon a finding by the~~  
63 ~~economic development agency that such private corporation,~~  
64 ~~partnership, or person is still actively considering locating,~~  
65 ~~relocating, or expanding its business activities in this state.~~  
66 ~~Such a request for an extension in the period of confidentiality~~  
67 ~~must be received prior to the expiration of any confidentiality~~  
68 ~~originally provided under this section.~~

69 (b)(e) A public officer or employee may not enter into a  
70 binding agreement with any corporation, partnership, or person



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71 who has requested confidentiality of information under this  
72 subsection until 90 days after the information is made public  
73 unless:

74 1. The public officer or employee is acting in an official  
75 capacity;

76 2. The agreement does not accrue to the personal benefit of  
77 such public officer or employee; and

78 3. In the professional judgment of the officer or employee,  
79 the agreement is necessary to effectuate an economic development  
80 project.

81 (3) TRADE SECRETS.—Trade secrets held by an economic  
82 development agency are confidential and exempt from s. 119.07(1)  
83 and s. 24(a), Art. I of the State Constitution.

84 (4) PROPRIETARY CONFIDENTIAL BUSINESS INFORMATION.—  
85 Proprietary confidential business information held by an  
86 economic development agency is confidential and exempt from s.  
87 119.07(1) and s. 24(a), Art. I of the State Constitution, until  
88 such information is otherwise publicly available or is no longer  
89 treated by the proprietor as proprietary confidential business  
90 information.

91 (5) IDENTIFICATION, ACCOUNT, AND REGISTRATION NUMBERS.—A  
92 federal employer identification number, unemployment  
93 compensation account number, or Florida sales tax registration  
94 number held by an economic development agency is confidential  
95 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
96 Constitution.

97 (6) ECONOMIC INCENTIVE PROGRAMS.—

98 (a) The following information held by an economic  
99 development agency pursuant to the administration of an economic



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100 incentive program for qualified businesses is confidential and  
101 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
102 Constitution for a period not to exceed the duration of the  
103 incentive agreement, including an agreement authorizing a tax  
104 refund or tax credit, or upon termination of the incentive  
105 agreement:

106 1. The percentage of the business's sales occurring outside  
107 this state and, for businesses applying under s. 288.1045, the  
108 percentage of the business's gross receipts derived from  
109 Department of Defense contracts during the 5 years immediately  
110 preceding the date the business's application is submitted.

111 ~~2. The anticipated wages for the project jobs that the~~  
112 ~~business plans to create, as reported on the application for~~  
113 ~~certification.~~

114 ~~2.3. The average wage actually paid by the business for~~  
115 ~~those jobs created by the project or An individual employee's~~  
116 ~~personal identifying information that ~~which~~ is held as evidence~~  
117 ~~of the achievement or nonachievement of the wage requirements of~~  
118 ~~the tax refund, tax credit, or incentive agreement programs or~~  
119 ~~of the job creation requirements of such programs.~~

120 ~~3.4. The amount of:~~

121 a. Taxes on sales, use, and other transactions paid  
122 pursuant to chapter 212;

123 b. Corporate income taxes paid pursuant to chapter 220;

124 c. Intangible personal property taxes paid pursuant to  
125 chapter 199;

126 d. Insurance premium taxes paid pursuant to chapter 624;

127 e. Excise taxes paid on documents pursuant to chapter 201;

128 f. Ad valorem taxes paid, as defined in s. 220.03(1); or



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129 g. State communications services taxes paid pursuant to  
130 chapter 202.

131  
132 However, an economic development agency may disclose in the  
133 annual incentives report required under s. 288.907 the aggregate  
134 amount of each tax identified in this subparagraph and paid by  
135 all businesses participating in each economic incentive program.

136 (b)1. The following information held by an economic  
137 development agency relating to a specific business participating  
138 in an economic incentive program is not confidential or exempt  
139 from disclosure 90 days after an economic incentive agreement is  
140 signed with that business ~~An economic development agency may~~  
141 ~~release:~~

142 a. The name ~~names~~ of the qualified business ~~businesses~~.

143 b. The total number of jobs the ~~each~~ business committed  
144 ~~expects~~ to create or retain.

145 c. The total number of jobs created or retained by the ~~each~~  
146 business.

147 d. Notwithstanding s. 213.053(2), the amount of tax  
148 refunds, tax credits, or incentives awarded to, and claimed by,  
149 or, if applicable, refunded to the state by the ~~each~~ business.

150 e. The anticipated total annual wages of employees the  
151 business committed to hire or retain.

152 2. For a business applying for certification under s.  
153 288.1045 which is based on obtaining a new Department of Defense  
154 contract, the total number of jobs expected and the amount of  
155 tax refunds claimed may not be released until the new Department  
156 of Defense contract is awarded.

157 ~~(c) An economic development agency may publish statistics~~



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158 ~~in the aggregate and classified so as to prevent the~~  
159 ~~identification of a single qualified applicant.~~

160 (7) PENALTIES.—Any person who is an employee of an economic  
161 development agency who violates the provisions of this section  
162 commits a misdemeanor of the second degree, punishable as  
163 provided in s. 775.082 or s. 775.083.

164 ~~(8) LEGISLATIVE REVIEW OF EXEMPTIONS.—This section is~~  
165 ~~subject to the Open Government Sunset Review Act in accordance~~  
166 ~~with s. 119.15 and shall stand repealed on October 2, 2012,~~  
167 ~~unless reviewed and saved from repeal through reenactment by the~~  
168 ~~Legislature.~~

169 Section 2. This act shall take effect upon becoming a law.

171 ===== T I T L E A M E N D M E N T =====

172 And the title is amended as follows:

173 Delete everything before the enacting clause  
174 and insert:

175 A bill to be entitled  
176 An act relating to a review under the Open Government  
177 Sunset Review Act; amending s. 288.075, F.S., which  
178 provides public records exemptions for information  
179 held by economic development agencies; saving from  
180 repeal the exemption concerning plans, intentions, or  
181 interests of a private corporation, partnership, or  
182 person to locate, relocate, or expand any of its  
183 business activities in this state; providing that the  
184 exemption applies if a request for confidentiality is  
185 made before an economic incentives agreement is  
186 signed; revising the duration of the period in which



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187 information may remain confidential and exempt from  
188 disclosure; saving from repeal the exemption for trade  
189 secrets; saving from repeal the exemption for  
190 proprietary confidential business information; saving  
191 from repeal the exemption for identification, account,  
192 and registration numbers and sales, wage, and tax data  
193 relating to a recipient of an economic development  
194 incentive; providing that the taxes paid by businesses  
195 participating in an economic incentive program may be  
196 disclosed in the aggregate; authorizing the disclosure  
197 of specified information relating to a business 90  
198 days after an economic incentive agreement is signed;  
199 removing the scheduled repeal of the exemptions;  
200 providing an effective date.